

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
MANUEL COUGIL, :  
:  
Plaintiff, : 11 Civ. 1318 (DLC)  
:  
-v- : OPINION & ORDER  
:  
MANHATTAN FORD LINCOLN-MERCURY, INC., :  
UNITED AUTO WORKERS UNION LOCAL 259 :  
and ARMAND LUGASSY, :  
Defendants. :  
:  
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APPEARANCES:

For the plaintiff:  
Frances Nicotra, Esq.  
853 Summit Ave.  
Jersey City, NJ 07307

For defendants Manhattan Ford Lincoln-Mercury, Inc. and Armand  
Lugassy:  
Adam C. Weiss, Esq.  
Milman Labuda Law Group PLLC  
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For defendant United Auto Workers Union Local 259:  
Regina C. Hertzog  
Cleary & Josem, LLP  
One Liberty Place, 1650 Market Street  
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DENISE COTE, District Judge:

The plaintiff, Manuel Cougil ("Cougil"), brings this action  
against Manhattan Ford Lincoln-Mercury, Inc. ("MFLM"), United  
Auto Workers Union Local 259 (the "Union") and Armand Lugassy

("Lugassy"), asserting claims under the First, Fourth, Eighth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1983 ("§ 1983"), and New York State Labor Law § 704 ("§ 704") against all defendants; a breach of contract claim against MFLM and Lugassy; and a breach of the duty of fair representation against the Union. The defendants have moved to dismiss Cougil's complaint, and MFLM and Lugassy also bring a motion for sanctions pursuant to Federal Rule of Civil Procedure 11.

#### BACKGROUND

The following facts are drawn from the complaint filed on February 10, 2011 (the "Complaint") and are assumed to be true for the purposes of this motion. Cougil was employed as an automobile technician by MFLM from 1988 through March 10, 2008, when he was fired. While an employee, Cougil was given promotions and pay raises, reaching a position of "master technician." Lugassy was Cougil's supervisor for several years prior to March 10, 2008. As a member of the Union, Cougil was subject to the collective bargaining agreement ("CBA") between the Union and MFLM.

MFLM did not provide adequate training to prevent the "unlawful employment activity" of its employees. On several

occasions in early 2008 -- February 7, February 12, and March 10 -- Cougil filed a grievance with the Union about MFLM and Lugassy. The defendants were all on notice that he was filing these grievances. On March 10, Cougil was fired from his job. The proffered reason was poor workmanship, but this was a pretext for retaliation for filing grievances with the Union. The Union did not intercede to prevent Cougil's discharge, nor did it file a grievance against MFLM's unlawful employment practices.

#### PROCEDURAL BACKGROUND

Cougil filed this action in New York State court on February 10, 2011. The defendants removed the action to federal court on February 21. The Union then filed a motion to dismiss on March 9 and MFLM and Lugassy filed a motion to dismiss on March 10. This Court set a schedule for briefing these motions on March 11, allowing Cougil to oppose the motions or amend his complaint by March 31. Cougil was informed that this would be his last opportunity to amend his complaint.

In a letter dated March 21, the defendants informed the Court that on February 24, Cougil had filed an amended complaint in the state court action. The Court informed the parties that

the March 11 scheduling order remained in effect and that any amended complaint had to be filed in federal court by March 31.

Cougil has filed neither an amended complaint nor an opposition to either motion to dismiss. On April 1, 2011, after the deadline to amend the complaint or file an opposition brief had passed, counsel for Cougil contacted this Court's chambers to inform the Court that she expected Cougil would wish withdraw his complaint. By a letter dated April 21, Cougil indicated a desire to withdraw the complaint. This Court's chambers informed Cougil's counsel that the letter did not conform to Federal Rule of Civil Procedure 41.<sup>1</sup> Cougil then attempted to get the defendants' consent to remand the action to state court, where he would file an amended complaint. The amended complaint would purport to drop the federal law claims as well as all claims against the Union. In a letter dated June 15, Cougil informed the Court that the defendants had not consented to this course of action. MFLM and Lugassy then submitted a letter dated June 16 requesting that the still-unopposed motion to dismiss be granted, as any attempt to amend the complaint or remand the case would be untimely, and because the amended

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<sup>1</sup> Under Rule 41(a), a plaintiff has the right to withdraw his claims by filing a notice of dismissal at any time before his opposing party files an answer or summary judgment motion, or by filing a stipulation of dismissal signed by all parties to the action that have appeared.

complaint suggested by Cougil still asserted federal causes of action.

#### DISCUSSION

On a motion to dismiss the court must "accept all allegations in the complaint as true and draw all inferences in the non-moving party's favor." LaFaro v. New York Cardiothoracic Group, PLLC, 570 F.3d 471, 475 (2d Cir. 2009) (citation omitted). The court is "not bound to accept as true legal conclusions couched as factual allegations. Only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 475-76 (citing Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950-51 (2009)). A complaint must do more than offer "naked assertions devoid of further factual enhancement." Iqbal, 129 S. Ct. at 1949 (citation omitted).

#### I. Section 1983 Claim

"To state a claim under Section 1983, a plaintiff must allege facts indicating that some official action has caused the plaintiff to be deprived of his or her constitutional rights." Zherka v. Amicone, 634 F.3d 642, 644 (2d Cir. 2011) (citation omitted) (emphasis supplied). "[A] private individual may be considered a state actor for purposes of a constitutional challenge if his/her conduct is fairly attributable to the

state." Leeds v. Meltz, 85 F.3d 51, 54 (2d Cir. 1996) (citation omitted).

Cougil asserts no plausible allegation that any of the defendants acted in any official capacity nor that their conduct might be attributable to the state. Rather, he alleges only the conclusory allegation that the defendants were "acting under color of the laws, statutes, ordinances, rules and regulations of the State of New York," a legal conclusion devoid of factual support. Therefore, his complaint does not assert a plausible § 1983 claim arising from alleged violations of the First, Fourth, Eighth and Fourteenth Amendments. These claims are dismissed.

## II. Section 301 Preemption

In the Complaint, Cougil asserts that MFLM and Lugassy breached the collective bargaining agreement, and that the Union failed to file a grievance against MFLM for its retaliatory action. He also alleges that the defendants violated § 704, which describes unfair labor practices that are unlawful for employers to practice. The defendants argue that all these claims are preempted by federal law -- specifically, the Labor Management Relations Act Section 301, 29 U.S.C. § 185 ("§ 301").

"The Supreme Court has interpreted section 301 as a congressional mandate to the federal courts to fashion a body of

federal common law to be used to address disputes arising out of labor contracts." Vera v. Saks & Co., 335 F.3d 109, 114 (2d Cir. 2003) (citation omitted). § 301 provides that:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). "[W]hen a state claim alleges a violation of a labor contract, the Supreme Court has held that such claim is preempted by section 301 and must instead be resolved by reference to federal law." Vera, 335 F.3d at 114. These include hybrid claims, wherein a plaintiff alleges a breach of a collective bargaining agreement against an employer and a breach of the duty of fair dealing against a union. See DelCostello v. International Broth. of Teamsters, 462 U.S. 151, 163-65 (1983). "The unusual pre-emptive power accorded section 301 extends to create federal jurisdiction even when the plaintiff's complaint makes no reference to federal law and appears to plead an adequate state claim." Vera, 335 F.3d at 114 (citation omitted).

But, when "a state prescribes rules or establishes rights and obligations that are independent of a labor contract, actions to enforce such independent rules or rights would not be

preempted by section 301." Id. at 115. Even if resolving a dispute under a state law claim and the CBA "would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for § 301 pre-emption purposes." Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 410 (1988).

Cougil's claims that MFLM and Lugassy breached the CBA and that the Union breached its duty of fair representation require interpretation of the CBA, and are thus preempted as a hybrid § 301 claim. But the defendants do not explain how resolution of the § 704 claim necessarily requires interpretation of the CBA. It must be noted that they have been hindered in doing so by the vaguely worded § 704 claim and the plaintiff's failure to respond to the motion to dismiss. Nonetheless, Cougil's § 704 claim may allege a violation of an obligation placed on employers like MFLM that is legally independent of the CBA, and to the extent it does so, it is not preempted by § 301.

### III. Section 301 Claim

§ 301 claims have a six-month statute of limitations period. See DelCostello, 462 U.S. at 169-171 (1983) (adopting limitations period provided by Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b)). With respect to a



plaintiff's claim against a union, this period begins when a plaintiff "knew or reasonably should have known that a breach of the duty of fair representation had occurred." Kavowras v. New York Times Co., 328 F.3d 50, 55 (2d Cir. 2003) (citation omitted).

The Complaint alleges that Cougil was fired from March 10, 2008, and that the Union did nothing to protect his employment beginning on that day. There are no allegations of any events occurring after that date, and the Complaint was filed nearly three years later, on February 10, 2011. The § 301 claim is barred as untimely and must be dismissed.

#### IV. Section 704 Claim

As there are no longer any federal claims in this action, it is within the Court's discretion whether to exercise supplemental jurisdiction over the plaintiff's state law § 704 claim. Klein & Co. Futures, Inc. v. Bd. of Trade of City of N.Y., 464 F.3d 255, 262-63 (2d Cir. 2006). "It is well settled that where, as here, the federal claims are eliminated in the early stages of litigation, courts should generally decline to exercise pendent jurisdiction over remaining state law claims." Id. at 262. Accordingly, the Court declines to exercise supplemental jurisdiction over this claim.

V. Sanctions

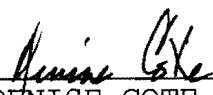
Defendants MFLM and Lugassy moved for sanctions pursuant to Federal Rule of Civil Procedure 11(c) because the plaintiff's attorney was aware that violations of the First Amendment could be asserted only against government actors, not private entities or persons. Any Rule 11 motion must be brought as a separate motion and filed only after the party against whom sanctions are sought has been given 21 days to withdraw or correct a pleading the movant alleges violates Rule 11(b). Lawrence v. Richman Group of CT LLC, 620 F.3d 153, 156 (2d Cir. 2010). Because the defendants have failed to comply with the procedural requirements of Rule 11, it is unnecessary to address the merits of their motion for sanctions.

CONCLUSION

The defendants' March 9 and 10, 2011 motions to dismiss the complaint are granted without prejudice to the refilling of the § 704 claim in state court. MFLM and Lugassy's motion for sanctions is denied. The Clerk of Court shall close the case.

SO ORDERED:

Dated: New York, New York  
July 7, 2011

  
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DENISE COTE  
United States District Judge